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FCC MAIL SECTION

Federal Communications Commission

DA 04-2505

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCH

In the Matter of

Reclassification of License
of FM Station KSHE,
Crestwood, Missouri

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RM-11032

ORDER TO SHOW CAUSE

Adopted: August 10, 2004

Released: August 12, 2004

Comment Date: September 27, 2004

By the Assistant Chief, Audio Division:

1. Before the Audio Division is a Petition for Rule Making filed by Charles Crawford ("Petitioner"), requesting the allotment of Channel 235A at Auxvasse, Missouri, as that community's first local aural transmission service. To accommodate this allotment, Petitioner also requests the reclassification of FM Station KSHE, Channel 234C, Crestwood, Missouri, to specify operation on Channel 234C0. FM Station KSHE currently operates on Channel 2314C with an effective radiated power ("ERP") of 100 kilowatts at 313 meters height above average terrain ("HAAT"). FM Station KSHE is subject to reclassification as a Class C0 facility, since it is operating below the minimum Class C antenna height requirements of at least 451 meters HAAT.¹

2. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest.² Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.³ In this instance, a Class C0 reclassification of FM Station KSHE at Crestwood would accommodate the Petitioner's request to allot Channel 235A to Auxvasse, Missouri, as that community's first local aural transmission service. Therefore, the Petitioner's request has sufficient public interest benefits and justifies the issuance of an order to show cause.

3. The reclassification of a Class C FM station to a Class C0 station may be initiated through the filing of a petition for rule making to amend the FM Table of Allotments.⁴ In instances where an initiating

¹ See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21,649 (2000) ("Second Report and Order"), and 47 C.F.R. §§ 1.420(g), n. 2, and 73.3573, n. 4.

² 47 U.S.C. § 316(a).

³ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

⁴ *Second Report and Order*, *supra*, and 47 C.F.R. § 1.420, n.2.

petition proposes amending the FM Table of Allotments in addition to the proposed reclassification of a Class C FM station, the Commission must issue an order to show cause as set forth in Section 73.3573, note 4, of the Commission's rules. In such circumstances, a notice of proposed rule making will be issued only after the reclassification issue has been resolved.

4. A petitioner proposing both amendment of the FM Table of Allotments and reclassification of a Class C FM station must certify that no alternative channel is available for the proposed service.⁵ Petitioner has submitted such certification. Therefore, in order to comply with the Commission's Class C0 reclassification procedures, we must issue this *Order to Show Cause* directed to Emmis Radio License Corporation ("Emmis Radio"), licensee of FM Station KSHE at Crestwood, Missouri. Emmis Radio is required to show cause why its license should not be modified to specify operation on Channel 234C0 in lieu of Channel 234C at Crestwood.

5. The license for FM Station KSHE (File No. BLH-19870504KB) at Crestwood, Missouri, can be modified to Channel 234C0 at its current authorized transmitter site located at coordinates 38-34-24 NL and 90-19-30 WL. Pursuant to 47 C.F.R. Section 1.87, Emmis Radio, no later than September 27, 2004 file a written statement showing with particularity why its respective license (File No. BLH-19870504KB) should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Emmis Radio to furnish additional information. If Emmis Radio raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, Emmis Radio will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

6. If Emmis Radio chooses to seek authority to modify its facilities, an acceptable application for a construction permit to increase the antenna height to at least 451 meters HAAT for FM Station KSHE must be filed with the Commission within 180 days subsequent to the show cause response due date (September 27, 2004). Upon the filing of an acceptable construction permit application, the proposal to allot Channel 235A at Auxvasse, will be dismissed. The present three-year construction period will be applicable if a construction permit is obtained by Emmis Radio for Channel 234C, as specified herein, under this procedure. If the construction is not completed as authorized, FM Station KSHE is subject to reclassification automatically as a Class C0 station, and, in that event, a new petition for rule making to allot Channel 235A at Auxvasse, may be refiled.

7. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL Send a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following licensee and its counsel:

⁵ See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also *Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

Emmis Radio License Corporation
3500 West Olive Avenue, Suite 300
Burbank, CA 91505

8. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau,
(202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau